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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte GABRIEL GARCIA MONTERO

_____

Appeal 2009-007027
Application 10/026,385[1]
Technology Center 2400

_____

Decided: March 30, 2010

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Before THU A. DANG, CAROLYN D. THOMAS, and STEPHEN C. SIU,
Administrative Patent Judges.

THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL

_____

[1] Application filed December 21, 2001. The real party in interest is IBM
Corporation.

I. STATEMENT OF THE CASE

Appellant appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-9, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

Appellant invented a system, method, a readable storage medium for dynamically partitioning a message topic into one or more subtopics so that multiple threads can service publishers and subscribers of messages associated with the message topic. (Spec., 4:4-6.)

B. ILLUSTRATIVE CLAIMS

The appeal contains claims 1-9. Claims 1, 6, 8, and 9 are independent claims. Claims 1, 5, and 6 are illustrative:

> 1.   A messaging system comprising:
> at least one message server;
> a plurality of topics stored in said at least one message server;
> a plurality of subtopics associated with at least one of said topics in said at least one message server; and
> a dynamic topic partitioning system configured to partition said at least one of said topics into said subtopics, wherein
> messages are posted to and retrieved from individual ones of said plurality of topics.

5.   The message system of claim 1, further comprising a plurality of threads of execution, each said thread hosting a process for communicating a message between one of said subtopics in said at least one message server and a message subscriber.

6.   A dynamic topic partitioning system comprising:

a message interface through which message publishers can post messages to selected topics, and from which message subscribers can request messages which have been published to selected topics;

a subtopic store configured to distribute messages of said selected topics within associated subtopics; and

a request processor in which requests to post and retrieve messages to and from individuals ones of said selected topics can be converted into message system requests to respectively post and retrieve messages to and from said associated subtopics in said subtopic store, said request processor processing each of said converted messages system requests in individual threads of execution.

C. REFERENCES

The references relied upon by the Examiner as evidence in rejecting the claims on appeal are as follows:

| Razdan | US 2002/0141584 A1 | Oct. 3, 2002 |
| Knight | US 6,493,703 | Dec. 10, 2002 |

D. REJECTIONS

The Examiner entered the following rejections which are before us for review:

(1) Claims 1, 3-6, 8 and 9 are rejected under 35 U.S.C. § 102(e) as being anticipated by Knight; and

(2) Claims 2 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Knight in view of Razdan.

II. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Knight

1. Knight discloses that "[a]n online message board system monitors message traffic generated by subscribers so that intelligent decisions can be made concerning what types of content to locate and retrieve, what priority to use for locating such content, how to organize such content for ease of access by the subscribers, etc." (Abstract.)

2. Knight discloses that "a message entry is sent from the user's computer system to server 220 where it is posted by posting logic 235 to an appropriate subject matter area/class/subclass index 241 based on both the content and the context of the message entry." (Col. 12, ll. 2-6.)

4

3. Knight discloses that "[t]he information in these subject matter areas is then broken down further into class and sub-classifications as desired." (Col. 10, ll. 12-14.)

4. Knight discloses that "[t]his process is dynamic, iterative, and continuous, so that a number of community/custom search robots may be simultaneously parsing database 270 to create, update or remove their associated subject matter area/class/subclass indices." (Col. 10, ll. 15-19.)

5. Knight discloses that "each posting is sorted and/or tagged with one or more additional parameter field(s) specifying one or more categories which such posting should fall under. . . . the present invention also intelligently classifies and stores messages by subject matter area/class/subclass in advance." (Col. 12, ll. 16-23.)

III. PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992).

> Anticipation of a patent claim requires a finding that the claim
> at issue 'reads on' a prior art reference. In other words, if
> granting patent protection on the disputed claim would allow
> the patentee to exclude the public from practicing the prior art,

5

> then that claim is anticipated, regardless of whether it also
> covers subject matter not in the prior art.

Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1346 (Fed. Cir. 1999)
(internal citations omitted).

IV. ANALYSIS

Grouping of Claims

In the Brief, Appellant argues claims 1, 2, 3, and 4 as a group (App. Br. 6-8). For claims 2-4, Appellant repeats the same argument made for claim 1. We will, therefore, treat claims 2-4 as standing or falling with claim 1.

Appellant separately argues claim 5 (App. Br. 6).

Appellant argues claims 6-9 as a group (App. Br. 8). For claims 7-9, Appellant repeats the same argument made for claim 6. We will, therefore, treat claims 7-9 as standing or falling with claim 6. *See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young,* 927 F.2d 588, 590 (Fed. Cir. 1991).

The Anticipation Rejection

We first consider the Examiner's rejection of the claims under 35 U.S.C. § 102(e) as being anticipated by Knight.

Claims 1-4

Appellant contends that "the Examiner's cited passage is to what Knight considers to be prior art; and therefore, the Examiner is not relying upon the teachings of Knight." (App. Br. 6.) Appellant further contends that "Knight appears to teach that the message is posted to a sub-topic (i.e., 'subject matter area/class/subclass index'). On the contrary, although the claimed invention recites that topics are portioned into subtopics, messages are posted to and retrieved from individual ones of the plurality of topics." (App. Br. 7.) Appellant further contends that "[t]he selection of a subtopic, however, does not establish that the user selected a 'parent topic,' as asserted by the Examiner." (Reply Br., 3:6-7.)

The Examiner found "that posting to a sub-topic implies the selection of a 'parent' topic, and that posting to the sub-topic implicitly includes posting to the selected topic." (Ans. 8.)

Issue: Has Appellant shown that the Examiner erred in finding that Knight discloses that messages are posted to and retrieved from individual ones of said plurality of topics?

Knight discloses an online message board system that defines ways of locating, retrieving, and organizing messages (FF 1). Specifically, Knight discloses posting messages to each of subject matter areas, classes, and a subclass index (FF 2). Claim 1 requires, *inter alia,* that messages are posted

to . . . plurality of topics. We find that the claimed "topics" includes any subject matter. Knight starts with subject matter areas, which are then broken down into class and sub-classifications (FF 3). Thus, we find that the claimed "messages are posted to . . . topics" reads on at least Knight's posting to subject matter areas. The fact that Knight also posts to class and subclass groups is irrelevant because claim 1 is not limited to *only* posting to topics.

Thus, Appellant has *not* persuaded us of error in the Examiner's conclusion of anticipation for representative claim 1. Therefore, we affirm the Examiner's § 102 rejection of independent claim 1 and of claims 2-4, which fall therewith.

Claim 5

Appellant contends that Knight fails to disclose a "plurality of threads of execution." (App. Br. 7: *see* also Reply Br. 5.)

The Examiner found that Knight discloses this feature on lines 22-27 of column 10 (Ans. 9).

Issue: Has Appellant shown that the Examiner erred in finding that Knight discloses a plurality of threads of execution as claimed?

Here, the Examiner found that Appellant is merely making a general allegation without pointing out how the language of the claims patentably distinguishes over the reference (Ans. 9). We agree. Appellant merely

8

argue that "entirely absent from these passages is a teaching as to the claimed 'plurality of threads of execution.'" (App. Br. 7.) However, the Examiner found that Knight discloses customized search robots performing independent functionality (Ans. 9-10). We add that Knight discloses that the search robots may simultaneously parse the database to update or remove entries (FF 4). We find that the reference, read in its entirety, provides adequate support for the Examiner's interpretation of the plurality of threads limitation in claim 5.

Therefore, we find that the claimed "plurality of threads" reads on Knight's simultaneously operating search robots and Appellant has failed to establish otherwise.

Thus, Appellant has *not* persuaded us of error in the Examiner's conclusion of anticipation for representative claim 5. Therefore, we affirm the Examiner's § 102 rejection of claim 5.

Claims 6-9

Appellant contends that "these passages are silent as to converting request to post and retrieve messages to and from individual ones of the selected topics into requests to and from associated subtopics." (App. Br. 8: *see* also Reply Br. 5-6.)

The Examiner found that Knight discloses the above-noted features in lines 18-30 of column 12. (Ans. 10.)

9

Issue: Has Appellant shown that the Examiner erred in finding that Knight discloses requests to post are "converted into message system requests to respectively post and retrieve messages to and from said associated subtopics"?

Knight discloses that each message is posted in multiple categories, i.e., subject matter area/class/subclass (FF 5). Thus, the Examiner concluded that "Knight performs the exact limitation the appellant argues." (Ans. 11.) In other words, the Examiner appears to reason that if a single message is given multiple classifications, there must be some type of correlation/conversion between the classifications. We agree.

For example, claim 6 recites "*can be converted*" and we find that Knight demonstrates that a request for a subject matter can be converted into a requested for a subclass given that each posting is associated with additional parameters specifying one or more categories. (FF 5).

Thus, Appellant has *not* persuaded us of error in the Examiner's conclusion of anticipation for representative claim 6. Therefore, we affirm the Examiner's § 102 rejection of independent claim 6 and of claims 7-9, which fall therewith.

The Obviousness Rejection

We now consider the Examiner's rejection of the claims under 35 U.S.C. § 103(a).

For the obviousness rejection, Appellant relies upon the same arguments as presented above, which we have already found unpersuasive.

Thus, Appellants have *not* persuaded us of error in the Examiner's conclusion of obviousness for representative claims 2 and 7. Therefore, we affirm the Examiner's § 103 rejection of claims 2 and 7.

V. CONCLUSIONS

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1-9.

Thus, claims 1-9 are not patentable.

VI. DECISION

In view of the foregoing discussion, we affirm the Examiner's rejection of claims 1-9.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED

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